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OCT 26 2005

October 26, 2005

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

Re: Joint Petition for Waiver of the Definition of
"Study Area" of the Appendix-Glossary of Part 36 of the
Commission's Rules, Petition for Waiver of Sec.
69.3(e)(11) of the Commission's Rules. CC Doc. No.
96-45

Dear Ms. Dortch:

Attached please find an original and four copies of the Joint Petition for Expedited Waiver of the Definition of "Study Area" being filed by Twin Valley Telephone, Inc. ("Twin Valley"), United Telephone Company of Kansas ("UTCK") and United Telephone Company of Eastern Kansas ("UTCEK"). The Petition also includes a request by Twin Valley for waiver of Section 69.3(e)(11) of the Commission's Rules.

The requisite filing fee and FCC Form 159 Remittance Advice is being submitted by Courier to Mellon Bank, Pittsburgh, Pennsylvania on this date.

Please acknowledge receipt on the "stamp and return" duplicate document attached for this purpose. Please contact me if there are any questions regarding this matter.

Sincerely yours



David Cosson
Counsel to Twin Valley Telephone, Inc.

Cc: Cathy Carpino
Gary Seigel

No. of Copies rec'd 0+4
List A B C D E

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page 1 of 1

| | | | |
|---|---------------------------------------|---|------------------------------|
| (1) LOCK BOX # 358140 | | SPECIAL USE ONLY | |
| | | FCC USE ONLY | |
| SECTION A - PAYER INFORMATION | | | |
| (2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Twin Valley Telephone, Inc. | | (3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$6,840.00 | |
| (4) STREET ADDRESS LINE NO. 1 22 Spruce Street | | | |
| (5) STREET ADDRESS LINE NO. 2 | | | |
| (6) CITY Miltonvale | | (7) STATE KS | (8) ZIP CODE 67466 |
| (9) DAYTIME TELEPHONE NUMBER (include area code) 785 427 2288 | | (10) COUNTRY CODE (if not in U.S.A.) | |
| FCC REGISTRATION NUMBER (FRN) REQUIRED | | | |
| (11) PAYER (FRN) 0002-3344-07 | | (12) FCC USE ONLY | |
| IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET | | | |
| (13) APPLICANT NAME | | | |
| (14) STREET ADDRESS LINE NO. 1 | | | |
| (15) STREET ADDRESS LINE NO. 2 | | | |
| (16) CITY | | (17) STATE | (18) ZIP CODE |
| (19) DAYTIME TELEPHONE NUMBER (include area code) | | (20) COUNTRY CODE (if not in U.S.A.) | |
| FCC REGISTRATION NUMBER (FRN) REQUIRED | | | |
| (21) APPLICANT (FRN) | | (22) FCC USE ONLY | |
| COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET | | | |
| (23A) CALL SIGN/OTHER ID | (24A) PAYMENT TYPE CODE BEA | (25A) QUANTITY 1 | |
| (26A) FEE DUE FOR (PTC) \$6,840.00 | (27A) TOTAL FEE \$6,840.00 | FCC USE ONLY | |
| (28A) FCC CODE 1 | | (29A) FCC CODE 2 | |
| (23B) CALL SIGN/OTHER ID | (24B) PAYMENT TYPE CODE | (25B) QUANTITY | |
| (26B) FEE DUE FOR (PTC) | (27B) TOTAL FEE | FCC USE ONLY | |
| (28B) FCC CODE 1 | | (29B) FCC CODE 2 | |
| SECTION D - CERTIFICATION | | | |
| CERTIFICATION STATEMENT I, <u>David Cosson</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. | | | |
| SIGNATURE <u>David Cosson</u> | | DATE <u>10/26/05</u> | |
| SECTION E - CREDIT CARD PAYMENT INFORMATION | | | |
| MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____ | | | |
| ACCOUNT NUMBER _____ | | EXPIRATION DATE _____ | |
| I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described. | | | |
| SIGNATURE _____ | | DATE _____ | |

SEE PUBLIC BURDEN ON REVERSE

FCC FORM 159

FEBRUARY 2003 (REVISED)

| Invoice No. | Date | Invoice Amount | Debit Memo Amt | Description | 19223 |
|-------------|------------|----------------|----------------|-------------------------------|-------|
| 10242005 | 10/24/2005 | \$6,840.00 | \$0.00 | WAIVER & TRANSFER APPLICATION | |

6840.00

TWIN VALLEY TELEPHONE, INC.

TWIN VALLEY TELEPHONE, INC.

General Fund
Miltonvale, Kansas

CITIZENS STATE BANK
Miltonvale, KS

83-1455
1011

CHECK NO. 19223

REG. 38554A8
EXP 02-28-07

6840 DOLS 00 CTS

DATE

10/25/2005

AMOUNT

\$6,840.00**

PAY EXACTLY

Six Thousand Eight Hundred Forty And 00/100

TO
THE
ORDER
OF

FEDERAL COMMUNICATIONS COMMISSION
REGULATORY FEES
PO BOX 358365
PITTSBURGH PA 15251-5365

TWIN VALLEY TELEPHONE, INC.
GENERAL ACCOUNT

Mark Chamberberg
AUTHORIZED SIGNATURE

Jackie L. Foster
COUNTERSIGNED

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Twin Valley Telephone, Inc.

and

United Telephone Company of Kansas
United Telephone Company of Eastern
Kansas

Joint Petition for Waiver of the
Definition of "Study Area" of the
Appendix-Glossary of Part 36 of the
Commission's Rules

CC Docket No. 96-45

To: The Commission

JOINT PETITION FOR EXPEDITED WAIVER

Pursuant to Section 1.3 of the Federal Communications Commission's ("FCC" or "Commission") Rules,¹ Twin Valley Telephone, Inc. ("Twin Valley") and United Telephone Company of Kansas ("UTCK") and United Telephone Company of Eastern Kansas (UTCEK") (together "United") (collectively, "Petitioners"), by their attorneys, request a waiver of the definition of "study area" contained in the Appendix—Glossary of Part 36 of the Commission's Rules. Additionally, Twin Valley seeks a waiver of Section 69.3(e)(11) of the Commission's Rules concerning participation in the National Exchange Carrier Association ("NECA") carrier

¹ 47 C.F.R. § 1.3.

common line tariff.

Petitioners request these waivers to enable Twin Valley to complete its proposed purchase of United's Aurora, Clifton, Clyde, Delphos, Glasco, Green, Leonardville, Longford, Milford, Morganville, Olsburg, Riley and Wakefield exchanges in Kansas ("The Exchanges"). Petitioners also request that The Exchanges be removed from United's study areas in Kansas and added to Twin Valley's study area.²

The Commission is requested to review and approve this Petition expeditiously. The facts and circumstances supporting grant are similar in material respects to those involved in waiver requests that have been approved recently.³ Prompt Commission approval will enable Petitioners to focus time and resources on The Exchanges to be served immediately following the purchase transaction, which Petitioners seek to close on or about February 1, 2006.

I. INTRODUCTION AND SUMMARY

United is a price cap incumbent local exchange carrier ("ILEC") that currently owns and operates approximately 127,000 access lines in 145 exchanges in four study areas in the state of Kansas. This transaction involves 13 of the exchanges and approximately 5,300 access lines in

² Twin Valley's study area code is 411840.

³ See, e.g., Dickey Rural Telephone Cooperative, et al. and Citizens Telecommunications Company of North Dakota, Joint Petition for Waiver of Definition of "Study Area" Contained in the Part 36, Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 61.41(c) and (d), 69.3(e)(11) and 69.605(c), Order, 17 FCC Rcd 16881 (Wir. Comp. Bur. 2002) ("Dickey Rural Order"); Petition for Waivers Filed by Baltic Telecom Cooperative, Inc., et al., Concerning Sections 69.3(e)(11), 69.3(i)(4), 69.605(c) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion & Order, 12 FCC Rcd 2433 (Acc. Aud. Div. 1997) ("Baltic Order").

two of the United Kansas study areas. After the transaction, United will continue to provide local telephone service in Kansas and will retain its study areas for its remaining exchanges.

Twin Valley owns and operates, as a cost study ILEC, approximately 2300 access lines in six exchanges in the state. It intends to bring the purchased exchanges into its ILEC study area.

As will be discussed in more detail below, the factors that the Commission requires for a study area waiver are or will be all present in this case: (1) the transfer of the exchanges from United to Twin Valley will not adversely impact the Universal Service Fund ("USF"), (2) a statement will be obtained from the State Corporation Commission of the State of Kansas ("KCC") that it does not object to the change of study areas, and (3) the public interest will be served by granting the waiver.

Related to this Petition, on September 23, 2005 the Petitioners filed an Application pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"),⁴ seeking the Commission's consent to transfer control of the exchanges being acquired by Twin Valley. Twin Valley will provide to customers and to the Commission the requisite timely anti-slamming notices required by Section 64.1120 of the Commission's rules.

II. WAIVER OF THE FROZEN STUDY AREA DEFINITION IS WARRANTED.

Petitioners seek a waiver of the frozen study area definition. Part 36 of the Commission's Rules "freezes" the definition of "study area" to the boundaries that were in existence on November 15, 1984. Although the rule was adopted to prevent a carrier from segregating

⁴ 47 U.S.C. § 214(a).

territories artificially to maximize high cost support,⁵ the Commission has recognized that changes “that result from the purchase or sale of exchanges in arms-length transactions” do not necessarily raise the concerns which prompted the freeze.⁶ The proposed sale to Twin Valley is an arm’s length transaction.

The Commission has recognized that failure to waive the rule in the case of the sale of exchanges would produce an absurd result, forcing the seller to continue to include exchanges in its study area for which it has no costs, and preventing the buyer from including in its study area exchanges it actually serves.⁷ Such a result would not serve the Commission’s policy objective of ensuring that carriers’ actual costs are reflected in their accounting so that they can accurately set just, reasonable and non-discriminatory rates.⁸ Inasmuch as Twin Valley’s proposed acquisition results from an arm’s length negotiation process with United, the standards for waiver of the freeze are met in this instance.

A. The Change in Study Area Boundaries Will Not Adversely Affect the Universal Service Fund.

To evaluate whether a study area boundary change adversely impacts the USF, the Commission analyzes whether a study area waiver will result in an annual aggregate shift in

⁵ See MTS and WATS Market Structure, Amendment of Part 67 of the Rules and Establishment of a Joint Board, Recommended Decision & Order, 57 RR 2d 267, ¶ 65 (1984).

⁶ See, e.g., Alltel Corporation Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the Definition of “Study Area” contained in Part 36, Appendix-Glossary of the Commission’s Rules, Memorandum Opinion and Order, 5 FCC Rcd 7505, ¶ 7 (Com. Carr. Bur. 1990).

⁷ *Amendment to Part 36 to the Commission’s Rules and Establishment of a Joint Board*, Notice of Proposed Rulemaking, 5 FCC Rcd 5974, 5975-76 (1990) (“Part 36 NPRM”).

high-cost support in an amount equal to or greater than one percent of the total high-cost support fund for the year.⁹ The proposed transaction will produce no such adverse impact, as Section 54.305 of the Commission's rules provides in pertinent part:

A carrier that acquires telephone exchanges from an unaffiliated carrier shall receive universal service support for the acquired exchanges at the same per-line support levels for which those exchanges were eligible prior to the transfer of the exchanges.¹⁰

In addition to support determined by Section 54.305(a) of the Commission's Rules, however, Twin Valley may also become eligible to receive "safety valve" support for the purchased access lines as a result of the investment Twin Valley plans to make in the acquired exchanges.¹¹

Second, Twin Valley may be eligible for additional interstate common line support ("ICLS").¹²

Nevertheless, any such additional support would not begin to approach \$40 million—the figure that now approximates an aggregated one percent increase of annual high cost support.¹³ First, there is no increase in the total amount of HCL support provided initially. Second, safety valve support, to the extent Twin Valley would be eligible, is capped by rule.¹⁴ Third, Twin

⁸ United will adjust, pursuant to 47 C.F.R. § 61.45, its price cap prices to reflect removal of the transferred access lines, as applicable.

⁹ See, e.g., U S WEST Communications, Inc., and Eagle Telecommunications, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1774, ¶ 14 (1995) ("Eagle Order"); Norway Order, ¶ 9.

¹⁰ 47 C.F.R. § 54.305(a).

¹¹ See 47 C.F.R. § 54.305(b)-(f).

¹² See, 47 C.F.R. 54.902(b)

¹³ USAC's most recent projections show annual high cost support exceeding \$4.0 billion. See USAC, HC01 - High Cost Support Projected by State by Study Area - 4Q2005.xls, online at <http://www.universalservice.org/> ("USAC HC01").

¹⁴ See 47 C.F.R. § 54.305(b)-(f).

Valley currently receives only an estimated \$608,000 in annual ICLS per line. By adding an additional 5300 lines to its study area, at the same per line support level, Twin Valley would receive an additional estimated \$1,438,000 in annual ICLS.¹⁵ Accordingly, this transaction is a non-event for purposes of the USF.¹⁶

B. State Commission Approval.

Petitioners' Joint Application to the KCC, requesting approval of their transaction was filed on August 1, 2005. Petitioners will provide for the record a copy of the KCC's Order as soon as it is released.

C. Granting The Waiver Is In The Public Interest.

The transfer of the thirteen exchanges from United to Twin Valley will promote the public interest because it will provide the customers with new services from a locally-based carrier specializing in meeting the communications needs of the few rural communities it serves.

Twin Valley intends to provide quality basic services to the exchange areas it is acquiring, and to improve the existing network where necessary. Twin Valley will install all new outside plant with Fiber-to-the-Home and packet switching capability. The new facilities will offer a full menu of basic and advanced voice and Broadband services including high speed DSL

¹⁵ Initially, ICLS for the acquired lines will be available based on the existing per line ICLS of the acquiring company. These amounts will be subject to true up once cost and revenue data are available. Actual amounts received will be disbursed on a monthly basis and are dependent on the timing of the grant of the waiver request, closing of the acquisition, and submission of updated line counts by the acquiring company.

¹⁶ Twin Valley recognizes that as a result of the transaction, access lines in the pre-acquisition study area will be eligible for different amounts of high cost support than the access lines being acquired from United. Twin Valley will adopt a methodology for excluding the costs

Internet access and video services. The fiber to the home investment will be made to all customers in the exchange service areas and is planned to be completed in all 13 exchanges within a three year period.

III. WAIVER OF SECTION 69.3(e)(11) OF THE COMMISSION'S RULES IS WARRANTED.

Twin Valley also requests a waiver of Section 69.3(e)(11), if necessary, in order to continue to allow it to use NECA as its tariff pool administrator. Section 69.3(e)(11) requires that any changes in NECA common line tariff participation resulting from a merger or acquisition of telephone properties are to be made effective on the next annual access tariff filing effective date following the merger or acquisition. Thus, Section 69.3(e)(11) may preclude Twin Valley from participating in the NECA common line tariff until the next annual access tariff filing effective date following the consummation of the acquisition transaction. This would require Twin Valley to file interstate tariffs, and assume the cost and administrative burden associated with that process for a brief period. Moreover, the inclusion of the small number of acquired access lines in the NECA carrier common line tariffs would represent a minimal increase in NECA common line pool participation and would not unduly increase the complexity of administering the LTS program.¹⁷

In light of the fact that Twin Valley is a very small carrier and that the administrative and financial burdens that could result in the absence of a waiver are great, Twin Valley requests a

associated with the acquired access lines from the costs associated with the pre-acquisition study area.

waiver of Section 69.3(e)(11) to the extent necessary for it to add these exchanges to its current study area and include them in the NECA pools upon the closing date of this acquisition.¹⁸

IV. CONCLUSION

The immediate requests are generally analogous to comparable requests routinely granted by the Commission for similarly situated carriers. Therefore, good cause having been shown, Petitioners respectfully request that this Joint Petition be granted on an expedited basis, thereby allowing the affected customers to benefit from this acquisition as soon as possible.

Respectfully submitted,

Twin Valley Telecommunications, Inc.

By:



David Cosson
Its Attorney

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**United Telephone Company of Kansas, Inc.
United Telephone Company of Eastern Kansas**

By:



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October 26, 2005

¹⁷ See, e.g., *Saddleback Communications and Qwest Corporation*, Order, 16 FCC Rcd 21159, 21166 (Acc. Pol. Div. 2001) (Commission granted waiver of Section 69.3(e)(11) for the acquisition of approximately 2700 access lines).

¹⁸ Twin Valley will request NECA to provide a statement for the record that it does not objection to the addition of these lines to the pool.